

# **CONSUMER INFORMATION**

COVERING

THE TEXAS ENGINEERING PRACTICE ACT

AND

BOARD RULES OF PRACTICE AND PROCEDURE

This pamphlet has been prepared in compliance with  
Section 1001.251 of the Texas Engineering Practice Act  
(CHAPTER 1001, TEXAS OCCUPATIONS CODE)



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# **TEXAS BOARD OF PROFESSIONAL ENGINEERS**

## **CONSUMER INFORMATION PAMPHLET**

The Texas Board of Professional Engineers has prepared this pamphlet as a convenience to the general public. The provisions of the Law and Board rules have been condensed for ready reference. Special emphasis has been placed on compliance and enforcement matters. A form has been provided to assist in filing a complaint against an engineer for alleged violations. The complete text of the Texas Engineering Practice Act (Act) and the Board rules is available in booklet form and on the Board's website at <http://www.tbpe.state.tx.us>. If additional information is needed concerning any particular section of the law or to file a complaint, please contact the Board office.

### **1. THE LAW.**

The 1937 engineer's registration law was significantly amended in 1965 and is cited as the Texas Engineering Practice Act (CHAPTER 1001, TEXAS OCCUPATIONS CODE). The Act has since had various amendments to include recommendations from the "Sunset" review process in 1981, with the latest revisions effective January 2, 2000. By Legislative intent, in order to protect the public health, safety, and welfare, the practice of engineering is entrusted only to those persons duly licensed and practicing under the Act. Only licensed engineers may call themselves or be otherwise designated as "any kind of an engineer" or use the term "engineer" or any variations thereof as a professional, business, or commercial title, name, representation, claim, asset, or means of advantage or benefit.

The Act prohibits unlicensed persons from practicing, offering or attempting to practice engineering; the direct or indirect use of proscribed engineering terms; or the receipt of any fee or compensation or promise of same for performing, offering, or attempting to perform any part of engineering as defined by the Act. Licensed engineers must properly identify themselves as such by using one of the following identifications after their name: "Engineer, Professional Engineer, or P.E." They must affix their official seal to the engineering documents when issued; abide by the Act, rules, and standards of conduct and ethics; and maintain their license in an active, unexpired status. While only those licenses that have been expired for less than two years can be renewed by payment of late penalty fees, the late renewals are not retroactive.

The Act requires that licensed engineers be employed to design and supervise engineering construction of public works exceeding \$8,000 in cost if electrical or mechanical engineering is involved, or if the cost exceeds \$20,000 and electrical or mechanical engineering is not involved. Engineers are also required when erecting, constructing, enlarging, altering or repairing, or drawing plans and specifications for the engineering involved in private buildings which exceed certain exempted criteria in the Act, basically that which exceeds 5,000 square feet of total floor area. The Act contains several specific but

limited exemptions from the requirement for professional licensure, provided the persons performing the specified functions are not represented to the public as engineers.

## **2. THE BOARD.**

The Texas Board of Professional Engineers was created by the Texas Legislature in 1937 and is authorized and required to license those individuals who are qualified to practice engineering as one of the learned professions. A full complement of the Board consists of six engineers and three public members, all appointed by the governor. Board meetings are conducted at least quarterly and are open to the public. The Board is authorized and empowered to make and enforce rules necessary to perform its duties, govern its own proceedings, regulate the practice of engineering, and to establish standards of conduct and ethics for engineers, insuring strict compliance with and enforcement of the enabling law. It is authorized to investigate alleged violations of law and its rules for compliance purposes, but it does not have inspection responsibilities or the capacity to “police” the engineering profession and the industries affected by the practice of engineering. Reliance in this regard is placed on the profession, public officials, and concerned citizens.

## **3. THE RULES**

The Board has adopted various rules concerning licensing and examinations, conduct and ethics, compliance and enforcement, and contested case hearings. These rules have been codified under the numbering system for the Texas Administrative Code. Business entities that offer or provide consulting engineering services to the public of Texas or that makes a representation of offering or providing engineering services through the use of “Engineering” terms in the business name are required by the Act to register with the Board. A retainer or independent contractor relationship of a license holder does not legitimize the hiring firm. License holders are required to apprise the Board of each change of business association as it occurs. Multiple company offices are required to be supervised by a license holder. Texas engineers are not licensed by disciplines, but they are usually recognized by the major branch in which they qualified at the time of licensure. Engineers must seal, sign, and date engineering plans and documents when issued, but they may not seal subject matter in which they are not qualified by education or experience to form a dependable judgment. Sealing the unsupervised work product of another who is neither an employee nor a subordinate is considered a violation of the Act, contributing to the unauthorized practice of engineering by unlicensed individuals.

## **4. COMPLIANCE AND ENFORCEMENT.**

The Board hired its first investigator in 1968, and inquiries of law and rule infractions have been pursued primarily to obtain voluntary compliance, with litigation and formal administrative hearings reserved as a last resort or for the more serious situations. The majority of complaints and investigations involve misrepresentations rather than outright unlicensed practice affecting life and property. Effective September 1, 1987, other public officials who enforce laws, ordinances, codes or regulations that affect the practice of engineering have certain responsibilities for accepting sealed engineering documents and reporting violations of the Act to proper authorities.

## **5. INTERPRETATIONS.**

The State Attorney General has rendered several significant opinions interpreting the Engineering Practice Act by which the Board is guided. Opinion C-691 supports the prohibition of unlicensed individuals publicly using titles such as “sales engineer” and other similar designations. Opinion C-791 clarifies that public school buildings are public works necessarily involving structural, electrical, and mechanical engineering requiring engineers in their design and supervision of construction. Opinion H-372 concludes that a private association of engineers and its members are prohibited from using the term “engineers” in a manner that tends to create an impression that unregistered individuals are licensed engineers. Opinion H-201 differentiates the duties and titles of a county road engineer and a road administrator, the former required to be a registered engineer. Opinion H-1104 reinforces the teaching of engineering as the practice of engineering wherein academic engineering titles may be regulated by the Board. Opinion MW-384 clarifies the so called “industry exemption” for unlicensed individuals, concluding that the Act does not exempt persons employed in industry as engineers from the operations or the scope of the Act. Opinion MW-568 permits engineers to use the title of architectural engineer without violating the Architects Practice Act. Opinion JM-482 interprets Art. 6252-13c, V.T.C.S., to require a license revocation for a felony conviction which includes incarceration.

Opinion JM-693 (with subsequent letter of clarification) permits state Licensed Air Conditioning and Refrigeration Contractors to “design” systems, without compromising the Engineering Practice Act as it applies to air conditioning contracting. Design in that sense has been defined by the Board to include layouts, fittings, drawings, and the translating of specifications, calculations, sketches, and other documents developed by engineers, into working drawings to assist the contractor in the installation, alteration or modification of various systems covered by his license. Opinion JM-1189 in essence prohibits public entities from awarding “design/build” contracts for the construction of public works on the basis of competitive bidding where architectural or engineering services comprise a component of the contract; that is, the professional design services have to be completed before construction bidding takes place. Opinion DM-161 concludes that the statute regulating the practice of architecture does not prohibit a licensed professional engineer from preparing plans and specifications, the preparation of which requires the application of engineering principles and the interpretation of engineering data, for new public buildings used for education, assembly, or office occupancy and the construction costs exceed \$100,000.

Four of the Board’s injunctive cases have resulted in case law decisions cited by attorneys and the courts as precedent interpretations. In the Dalton, Hinds & O’Brien Engineering Co. case (382 S.W.2d 130), the appeals court noted that the legislature has expressly provided that the practice of engineering may be carried on by a corporation requiring only that the agency by which such professional engineering services are actually rendered be registered engineers; that nothing in the Texas Business Corporation Act is inconsistent with this express provision of Section 17 of the Engineering Practice Act, Article 3271a, Vernon’s Annotated Civil Statutes, which is now designated as Section 1001.405, Chapter 1001, Texas Occupations Code. The fact that the name of the corporation happens to include the last names of persons interested in the corporation who are not registered as engineers does not convey the impression that such individuals are entitled to act as professional engineers. In the Tackett case (466 S.W.2d 332), the appeals court ruled that the Board could enjoin Carl Tackett from using the trade name Television Engineering Company because he was not a registered engineer. His business was misrepresented to the public, and though his sales and service activities were exempt from

registration requirements, they could not be represented as engineering. In the Wichita Engineering Company case (504 S.W.2d 606), the appeals court noted this was not an engineering business and ruled the Board's injunction to prohibit "engineering" in the corporate name to be a valid exercise of the state's police powers, and the Act did not violate either constitutional prohibitions on retroactive law or impairment of contracts. In the Kilpatrick case (610 S.W.2d 867), the appeals court affirmed an injunction against Don Kilpatrick from using the business name of Plastic Engineering & Sales Corp. for similar reasons found in the Wichita decision.

## **6. SANCTIONS.**

The Board may, as the circumstances warrant, deny an application for licensure or shall suspend or revoke a license, probate a suspension, refuse to renew a license, issue formal and informal reprimands and/or impose an administrative penalty against any license holder who is determined by the Board to be censurable for certain specified conduct. Such conduct includes any fraud or deceit in obtaining a license; any gross negligence, incompetency or misconduct in the practice of professional engineering; retaliation by an applicant against a reference for the applicant; a violation of the Act or a Board rule; and failure to provide plans and specifications for review as required by the Elimination of Architectural Barriers Law. These actions are in addition to the right to seek injunctive relief in the civil courts for violations of the Act or Board rules, or misdemeanor convictions for violations of the Act by anyone. Complaints, which do not warrant any of the above actions, will be dismissed.

The Board may also, as the circumstances warrant, enter into a Voluntary Compliance Agreement, issue a Cease and Desist Order, impose an administrative penalty, file an injunctive suit, or file a criminal complaint to resolve inquiries/complaints against unlicensed individuals, firms, partnerships or other entities who the Board has determined to have violated the Act.

## **7. COMPLAINT POLICIES.**

The Board intends to be fair and reasonable in the application and enforcement of the Act and its rules, with the gravity of a situation dictating the type of disposition and severity of action. Investigations will be pursued on sufficient and probable cause based on written complaints to which the knowledgeable person does not have to swear, although an affidavit is always preferred when a license holder is the subject of the complaint. The Board is rarely responsive to anonymous or hearsay complaints.

The Board considers any matter requiring investigative activity before its resolution to be a complaint situation, whether initiated by the Board or in response to an outside source. Complaints are considered to be of two general types. The first type involves an unlicensed person or entity allegedly violating a provision of the Act or Board rules. Under many circumstances, the complainant does not get further involved during the investigation or disposition phases. The second type concerns a license holder whose conduct or activities are alleged to be contrary to some provision of the Act or a Board rule. Due to the subjective nature of some ethical rules, and the relationship of the knowledgeable complainant to the involved engineer in many situations, the successful disposition of an inquiry usually depends in some manner on the complainant's continued cooperation.

Complainants are not expected to investigate, per se, any violative situation, but they are expected to be cooperative and familiar enough with the “who, what, where, when, why, and how” of the matter to register a valid complaint. The Board is not responsible for proving the basis of a complainant’s allegations but will develop additional information upon which to base appropriate action. Requests for Board action should not be considered completely in lieu of any other legal remedy available. The Board will not be used as a collection agency or intervenor in fee disputes.

## **8. UNLICENSED INDIVIDUALS.**

When an unlicensed person or business entity is suspected of violating the Act or Board rules, the incident should be reported to the Board in writing. Sufficient facts, circumstances, and identification of known witnesses and public records or other evidentiary materials should be submitted to fairly support the alleged offense. These situations may include the actual unlicensed practice of engineering, the offer to perform engineering services, the use of an engineering title, or use of an engineering term in a corporate or assumed business name, any of which may be evidenced by plans, specifications, stationery, brochures, directories, advertising, billings, or any other means of communicating with the public. Also, certificates of license holders and engineer seals have been known to be forged by unlicensed individuals.

## **9. LICENSED ENGINEERS.**

When a license holder’s conduct and activities display evidence of gross negligence, incompetency or misconduct, or a violation of the Act or Board rules, the situation should be reported to the Board in writing. The section of law or particular rule involved should be revealed before charges are filed, and the facts must be sufficiently presented and documented to fairly evidence the violation alleged and to allow for a defense.

Although licensed holders can be enjoined by the Board or be prosecuted on misdemeanor charges, most investigations of engineers are approached as though some administrative action affecting their license will be considered by the Board. An engineer whose license has expired but is still renewable remains a license holder for the purpose of taking administrative action. Disciplinary guidelines assist the Board in evaluating and disposing of similar violations with the similar sanctions, including sufficient flexibility to vary from a suggested course of action depending on the facts and circumstances of each individual case. Since the revocation of a license is the ultimate punitive action available to the Board, procedures from the outset should conform to the due-process rights of the accused. The Board has devised a complaint form that facilitates the presentation of a charge in line with the requirements of the Administrative Procedure and Texas Register Act (Art. 6252-13a, V.T.C.S.) and related Board rules for contested case hearings.

When the Board proposes to take administrative action against a license holder, he will be so notified and offered the opportunity to have an informal conference with the staff to present mitigative information in his defense and show compliance with all requirements of law. If an agreed settlement cannot be reached, the matter must be resolved by a formal hearing conducted for the Board by the State Office of Administrative Hearings (SOAH) under the provisions of Article 6252-13f, V.T.C.S.

After a request for rehearing is denied, a Board action may be appealed to a District Court for review of the record and sanction.

#### **10. PUBLIC INFORMATION.**

Anyone may communicate with the Board, attend Board and committee meetings, or visit its office in Austin to obtain information about licensure, acquire application forms and guidance, determine the licensure status of any individual, seek information about the Board's enforcement policies, or file a complaint. A free information booklet is available which contains the full text of the Texas Engineering Practice Act and the Board's Rules of Practice and Procedure. A biennial roster of licensed engineers is available at a minimal cost.